

137-055-3300

Incarcerated Obligor

(1) For purposes of this rule:

(a) "Correctional facility":

(A) Means any place used for the confinement of persons charged with or convicted of a crime or otherwise confined under a court order and includes but is not limited to a youth correction facility as provided in ORS 162.135.

(B) Includes any other location where a person completes an alternative form of confinement while still in the custody of a county, state, federal, or Tribal correctional agency, including, but not limited to, transitional leave or house arrest.

(C) Applies to a state hospital only as to persons detained therein charged with or convicted of a crime or after having been found guilty of a crime except for insanity under ORS 161.290 to 161.370.

(b) "Incarcerated obligor" means an obligor who is, or is expected to be, confined in a correctional facility for at least 180 consecutive days. The 180 days shall not include any time prior to January 1, 2018.

(c) "Release from incarceration" means release of an incarcerated obligor from confinement in a correctional facility.

(2) An incarcerated obligor is presumed unable to pay child support and a child support obligation does not accrue for the duration of the incarceration unless the presumption is rebutted.

(3) Within 30 days of identifying an "incarcerated obligor" who is ordered to pay ongoing support, the administrator will provide notice pursuant to ORS 25.247, of the administrator's intent to suspend support; and

(a) If an objection is received, the administrator shall cause the case to be set for a hearing before an administrative law judge to determine whether the presumption has been rebutted; or

(b) If no objection is received or if the administrative law judge upholds the suspension over an objection, the administrator shall:

(A) Discontinue billing monthly support to the obligor, beginning with the first day of the first month following the date of the obligor's incarceration or January 1, 2018, whichever is later; and

(B) File the notice of suspension or any order of the administrative law judge in the circuit court of the county where the support order is filed.

(4) Unless already modified or reinstated, the support order is reinstated by operation of law at 50% of the previously ordered support amount on the first day of the first month after obligor has been released for at least 120 days.

(a) Within 30 days following reinstatement of the order, the administrator will issue notice of the reinstatement to all parties pursuant to ORS 25.247.

(b) The administrator will file the notice of reinstatement in the circuit court of the county where the support order is filed with a money award showing that support has been reinstated at 50% of the previous support amount.

(c) Within 60 days following reinstatement of the order, the administrator shall review the support order for the purpose of modifying support under OAR 137-055-3430.

(5) Upon receiving proof that an obligor was confined in a correctional facility for at least 180 consecutive days, on or after January 1, 2018, and unless the presumption of inability to pay has been rebutted, the administrator will allow a credit and satisfaction against child support arrearages. Credit shall begin with the first day of the first month following the date of the obligor's incarceration and continue through the end of the month in which the number of days obligor has been released from a qualifying period of incarceration equals 120.

(a) The administrator will provide notice pursuant to ORS 25.247 of the administrator's intent to credit and satisfy child support arrearages.

(b) If an objection is received, the administrator shall cause the case to be set for a hearing before an administrative law judge to determine whether the presumption has been rebutted.

(c) If no objection is received or if the administrative law judge upholds the credit over an objection, the administrator shall allow a credit and satisfaction against child support arrearages.

(d) The notice of credit or any order of the administrative law judge shall be filed in the circuit court of the county where the support order is filed.

(6) The Oregon Child Support Program will not issue an income withholding order during the time an incarcerated obligor's order is suspended in order to preserve the obligor's income to meet the expenses of reintegration.

(7)(a) Pursuant to ORS 25.247(6), a party may object to the continued suspension of support by describing evidence of the incarcerated obligor's ability to pay that was not available at the time the order was suspended.

(b) If an objection as described in section (7)(a) of this rule is received, the administrator shall cause the case to be set for a hearing before an administrative law judge to determine whether the presumption has been rebutted and support should be reinstated.

(8)(a) If the administrative law judge determines that the presumption has now been rebutted pursuant to ORS 25.247(7), they will issue an order reinstating support at 50% of the previously ordered support amount effective the first day of the following month; and

(b) Within 60 days following reinstatement of the order, the administrator shall review the support order for the purpose of modifying support under OAR 137-055-3430.

(9) If support is reinstated as provided in section (4) of this rule, after a request for hearing has been referred to the Office of Administrative Hearings, the following provisions apply:

(a) If support is reinstated prior to a hearing taking place, the referral to the Office of Administrative Hearings will be withdrawn pursuant to OAR 137-003-0515(4)(b); or

(b) If support is reinstated on or before the date that support is reinstated pursuant to section (8)(a) of this rule, the order issued by the administrative law judge will be considered moot and have no force and effect.

(10) If issues related to the conversion of the Program to the Origin child support automated system prevented suspension of an order for an incarcerated obligor prior to an obligor's release from incarceration, the Program may proceed to retroactively suspend support as provided in section (3) of this rule and the case will be treated as though the suspension had been initiated in a timely manner.

(11) Orders modified to zero due to incarceration prior to January 1, 2018, are not subject to suspension and reinstatement under this rule.

(12) This rule applies only to child support judgments and orders originally entered in Oregon or which Oregon modified and assumed continuing, exclusive jurisdiction over pursuant to ORS Chapter 110.

Stat. Auth.: ORS 25.247, 25.505 & 180.345

Stats. Implemented: ORS 25.247 & 25.527

Effective: January 1, 2022